REMARKS/ARGUMENTS

Reconsideration of the above-identified application respectfully requested. The amendment to page 1 provides the patent number of the parent application. The amendments to the claims correct an inadvertent dependency (claim 44) and a term without proper antecedent basis (claim 46). No new matter is added by virtue of these claim amendments. Moreover, such claim amendments are ministerial in nature. Accordingly, Applicants assert that no claims have been narrowed with the meaning of *Festo* (*Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 US 722, 112 S.Ct. 1831, 152 L.Ed.2d 944, 62 USPQ2d 1705 (2002)). See also *Interactive Pictures Corp. v. Infinite Pictures Inc.*, Fed Cir., No. 01-1029, December 20, 2001 (addition of the words "transform calculation" was not a narrowing amendment because that addition did nothing more than make express what had been implicit in the claim as originally worded).

The following claims rejections have been levied:

(a) Claims 1, 2 and 5 stand rejected under 35 U.S. C. § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,011,066) in view of Fritz (U.S. Patent No. 5,423,453);

(b) Claims 3, 4, 6, 8, and 9 stand rejected under 35 U.S. C. § 103(a) in view of Anderson in view of Fritz, in further view of Gics (U.S. Patent No. 5,900,263);

(c) Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Davis (U.S. Patent No. 5,540,381);

(d) Claims 10, 12, 15, 18, 20, 23, 24, 28, 30-33, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics;

(e) Claims 13, 14, 16, 21, 22, 23, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Davis;

(f) Claims 17 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz, Gics, and Davis, in further view of Jackson (U.S. Patent No. 6,105,774);

(g) Claims 11, 19, 24, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Bunce (U.S. Patent No. 4,924,048)

(h) Claims 25 and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Anderson in view of Fritz, Gics, and Bunce, in further view of Davis;

(i) Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Jackson;

(j) Claims 38, 40, 43, and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics;

(k) Claim 39 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Bunce;

(l) Claims 41 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Davis; and

(m) Claim 45 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Fritz and Gics, in further view of Jackson.

The following double patenting rejections also have been levied:

(i) Claims 1-6, 8, and 9 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 1-7 of U.S. Patent No. 6,621,616 B1;

(ii) Claims 1-3 and 5-9 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 26 and 33 of U.S. Patent No. 6,621,616 B1;

(iii) Claim 7 stands rejected under the judicially created doctrine of obviousness type double patenting over claims 1-7 and 26-34 of U.S. Patent No. 6,621,616 B1;

(iv) Claims 10-12, and 15 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 10-12 and 15 of U.S. Patent No. 6,621,616 B1;

(v) Claims 13, 14, 16 and 17 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 8-12 and 16 of U.S. Patent No. 6,621,616 B1;

(vi) Claims 18-20, 23, and 24 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 17, 18, 20, 22, and 23 of U.S. Patent No. 6,621,616 B1;

(vii) Claims 21, 22, 27, 25, and 26 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 17, 18, 20, 21, and 22-25 of U.S. Patent No. 6,621,616 B1;

(viii) Claims 28-36 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 24-36 of U.S. Patent No. 6,621,616 B1;

(ix) Claim 37 stands rejected under the judicially created doctrine of obviousness type double patenting over claims 26-34 of U.S. Patent No. 6,621,616 B1;

(x) Claims 38-40 and 43-46 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 35-37, 39, 42, and 43 of U.S. Patent No. 6,621,616 B1; and

(xi) Claims 41 and 42 stand rejected under the judicially created doctrine of obviousness type double patenting over claims 37 ad 38 of U.S. Patent No. 6,621,616 B1.

Applicants respectfully traverse the rejections of the claims and grounds therefor.

The Anderson Citation

Anderson proposes a container for frozen, aseptically packaged, or microwavable foods, which container has a substantially flat bottom, an open top adapted to be covered by a lid, and a stand for displaying the container in an upright position. The Examiner admits that Anderson lacks a non-planar base.

The Fritz Citation

Fritz proposes a microwavable container for foods wherein the lateral sidewalls slope inwardly to a transitional wall which transitional wall mates with a base "configured in a manner to produce a generally upwardly curved bottom wall" (col. 3, ll. 17-19). Such curved bottoms walls are stated to produce a more uniform and even cooking of food housed in such containers.

The Gics Citation

Gics proposes a food package of trays and sleeves that extend laterally and are interconnected in an upstanding position. Each of the trays has a flat bottom.

The Davis Citation

Davis proposes a circular food container having a circular lid and being surmounted by a paperboard sleeve that has openings through which the lid extends. The container has a flat bottom and is not designed to be placed in an upstanding position.

The Bunce Citation

Bunce proposes a sealed, flat-bottomed microwavable food tray having side handles.

The Jackson Citation

Jackson proposes to package multiple containers within the same sleeve.

Rejection of claims 1, 2 and 5 over Anderson in view of Fritz

While Anderson proposes a container that stands in an upright position, the Examiner admits that Anderson lacks a non-planar base. That is, Anderson only discloses a flat base wall. Moreover, Anderson does not recognize that any redistribution of mass (weight) needs to be taken into account when the container is placed in an upright position. That is, Anderson provides a generically designed container that that be used for any type of foodstuff from frozen

to microwavable to aseptically packaged food. Anderson's novelty resides in a hinged lid system that provides tamper evidence to the consumer; yet, which is cheaper to manufacture for the manufacturer. Anderson does not deal with, nor even recognize, that standing the container on its end in an upright position brings certain problems to the forefront.

Applicants, on the other hand, were specifically designing a container package system that would improve upon prior upright designs. To that end, Applicants recognized that foodstuffs (loose or packaged) housed within the container would alter the balance of the container. While Applicants, and indeed likely others, could design an empty container that would stand upright position and be stable, it is only Applicants that addressed the impact that content in the container would have on such container stability.

The stability feature of the present invention is described in the application as follows:

> Handles 60/62 are seen in Fig. 6 to extend into cavity 54. Also unique to tray 12 is its bottom that has centrally-disposed button 64 that similarly penetrates into cavity 64. As will be illustrated and described later, handles 60/62 and button 64 penetrate into cavity 64 to locate foodstuffs in cavity 64 in a position that alters the center of gravity of food packing system 10 so that it is stable when stood up, *e.g.*, for store display purposes. Internal handles 60/62 also reduce the overall width of tray 12, reduce the amount of material required for manufacturing tray 12, and provide a more stable product.
>
> Page 5, ll. 30-36.
>
> With more specific reference to Fig. 10, handles 60/62 urge the tray contents towards the center of cavity 54 while button 64 moves the center of gravity opposite the direction of lean of the food packaging system. This center of gravity, arrow 84, shift makes the food packaging system more stable when placed in the illustrated upright position.
>
> Page 6, ll. 32-36.

These excerpts from the above-identified application demonstrate recognition that the center of gravity of the container will be altered by the contents that are housed therewithin.

Two design features are described for retaining the stability of the otherwise stable container. The first design consideration is to alter the flat bottom of the container to have a button that pushes into the cavity of the container. Such flat bottom container with button can be seen in the drawings, *inter alia*, in Figs. 6 and 10. In Fig. 6, button **64** will be seen rising up from the container flat bottom. The consequence of button **64** is seen in Fig. 10, where the food pouches are pushed forwardly toward the container lid to alter the center of gravity, illustrated by arrow **84**. Without button **84**, the upright container would lean to the right and the food pouches would have a force (gravity) component in the same direction. But, by pushing the

food pouches to the left, the center of gravity of the filled container is moved to the left and close to the center between the left and upper lip upon which the filled container rests. The stability of the filled container is improved during presentation by the grocer, in handling by the grocer, in handling by the consumer, *etc.*

This design feature of altering the center of gravity of the container in an upright position, is described in claim 1 by the following language, *to wit*,

> ...said base having a raised button extending into said cavity for stabilizing the center of gravity of said base when said base is placed in an upstanding position when said cavity is filled with food.
>
> Claim 1, ll. 5-7.

This design feature by Applicants solves a problem not even recognized by the art and, therefore, is patentable.

The second design feature is to push the handles inwardly into the cavity to also urge the foodstuffs housed therein towards the center, which also has a positive affect on the center of gravity and consequent stability of the container when placed in an upright position.

Anderson without question fails to recognize the problem recognized by Applicants and falls woefully short of even remotely proposing an answer.

Instead, the Examiner has cited Fritz for the purpose of showing Applicants' "raised button". The Examiner cites the following passages from Fritz in support of this proposition: col. 1, ll. 50-60, col. 2, ll. 10-15 and 30-35, and col. 3, ll. 30-35. These passages now will be examined in detail to reveal their true teachings.

The passage at col. 1 discusses the "problems encountered in the nonuniform heating or cooking of foods in containers which are constituted from microwave transparent materials" (col. 1, ll. 51-55). To solve such non-uniform cooking or heating, the prior art designed such containers to have a raised bottom. Matsui, cited at col. 2, ll. 10-15, seems to support this prior art design by calling for "the bottom of the container is raised to curved concavely towards the center thereof in order to distribute the container contents and thereby improve upon the heat distribution within the container". Watkins, in the second cited passage in col. 2, also calls for a raised bottom to distribute the food about the annulus of the tray bottom "to improve upon the uniform heating thereof." The final passage cited by the Examiner is the "Summary of the Invention", which calls for a container base having "a generally upwardly curved bottom wall".

Thus, it will be seen the Fritz's sole consideration is the uniform cooking of food in the microwave transparent container. Fritz, consonant with the art, provides a curved bottom wall

that distributes the food about the outer annulus of the container for aiding in uniformly heating the food housed therein.

Again, Fritz is totally silent about what happens to her container when it is placed in an upstanding position. That is, how can the container by stabilized in an upright position? Fritz, like Anderson, does not even recognize that the container will have a stability problem when it is displayed in an upright orientation. How then can either of these citations propose a solution to a problem that they both fail to recognize even exists? The answer is that they cannot and do not show the Applicants' inventive solution to this problem.

Thus, the combination of Anderson and Fritz is to provide a curved bottom for the upstanding container. Such a combination still relies on dumb luck that it is properly designed so as to remain stable in such upright position.

Applicants, however, have discovered that by providing a conventional flat base that a raised button can be provided to deliberately and positively alter the center of gravity of the upstanding container to aid it is being stable in such upright position. The art combination, then, fails to recognize Applicants' problem and fails to propose Applicants' solution to such problem. The claims, then, stand patentable over this art combination.

Rejection of claims 3, 4, 6, 8, and 9 over Anderson in view of Fritz, in further view of Gics

The Examiner cites the Anderson/Fritz combination as above. The Examiner cites Gics as showing that a food tray can be placed in an upstanding position. Of course, such upstanding position includes a plurality of side-by-side trays interconnected with an adjacent tray. For present purposes, Gics still shows a flat bottom tray. Gics also does not recognize that stability of the trays when filled with food is an issue, nor that a solution to that issue exits. Gics, then, does not make up for the deficiencies in the Anderson/Fritz combination. These claims, then, remain patentable over this cited art combination.

Rejection of claim 7 over Anderson in view of Fritz and Gics, in further view of Davis

The Examiner cites the Anderson/Fritz/Gics combination as above. The Examiner cites Davis for the proposition that sleeves can contain slots to receive flanges of the container to secure the sleeve to the container. For present purposes only, Applicants will assume this proposition to be true. Even so, Davis does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. This claim, then, remains patentable over this cited art combination.

Rejection of claims 10, 12, 15, 18, 20, 23, 24, 28, 30-33, and 35 over Anderson in view of Fritz and Gics

The Examiner cites the Anderson/Fritz/Gics combination as above. Independent claim 10 includes the tray limitations of claim 1 and adds a sleeve to the tray, which sleeve has a leg upon which the sleeve/tray combination can be placed in an upstanding position. Independent claim 18 adds at least one food pouch to the sleeve/tray combination. Independent claim 18 is like claim 1, but for the tray having a flat area upon which it can be stood in an upright position.

For the same reasons advanced above, this combination cannot render unpatentable these claims, because this combination fails to recognize the problem that Applicants identified and necessarily fails to advance a solution to such problem. Moreover, the art combination does not even accidentally disclose Applicants' solution as Applicants use a center of gravity-modifying button to urge stability of the upstanding container, rather than an entire bottom that is curved inwardly. Such different designs address different problems that each inventor is trying to solve. The art only is trying to solve the uniformity of heating of food in the container, while Applicants are trying to solve the stability issue of the tray with filled with food. This claim, then, remains patentable over this cited art combination.

Rejection of claims 13, 14, 16, 21, 22, 23, and 37 over Anderson in view of Fritz and Gics, in further view of Davis

The Examiner cites the Anderson/Fritz/Gics combination as above. The Examiner cites Davis for the proposition that sleeves can contain slots to receive flanges of the container to secure the sleeve to the container. For present purposes only, Applicants will assume this proposition to be true. Even so, Davis does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. This claim, then, remains patentable over this cited art combination.

Rejection of claims 17 and 27 over Anderson in view of Fritz, Gics, and Davis, in further view of Jackson

The Examiner cites the Anderson/Fritz/Gics/Davis combination as above. Jackson is cited for the proposition that multiple trays can be retained within a single sleeve. For present purposes only, Applicants will assume this proposition to be true. Even so, Jackson does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the

art even recognize Applicants' problems, much less propose a solution thereto. This claim, then, remains patentable over this cited art combination.

Rejection of claims 11, 19, 24, and 29 over Anderson in view of Fritz and Gics, in further view of Bunce

The Examiner cites the Anderson/Fritz/Gics combination as above. Bunce is cited for the proposition that microwave food trays conventionally have handles for convenience. Bunce's handles, however, extend outwardly from the sides of the tray. Applicants' handles, to the contrary, extend into the cavity for assisting in locating the food in a position that adds to the stability of the tray when placed in an upstanding position. See the application at page 5, ll. 30-36 and page 6, ll. 32-36, cited above in this regard.

Thus, Bunce does not make up for the glaring deficiencies of the Anderson/Fritz/Gics combination. In fact, disposing the handle inwardly adds further novelty to the present invention. None of the art even recognize Applicants' problems, much less propose a solution thereto. These claims, then, remains patentable over this cited art combination.

Rejection of claims 25 and 26 over Anderson in view of Fritz, Gics, and Bunce, in further view of Davis

The Examiner cites the Anderson/Fritz/Gics combination as above. The Examiner cites Davis for the proposition that sleeves can contain slots to receive flanges of the container to secure the sleeve to the container. For present purposes only, Applicants will assume this proposition to be true. Even so, Davis does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. These claims, then, remains patentable over this cited art combination.

Rejection of claim 34 over Anderson in view of Fritz and Gics, in further view of Jackson

The Examiner cites the Anderson/Fritz/Gics/Davis combination as above. Jackson is cited for the proposition that multiple trays can be retained within a single sleeve. For present purposes only, Applicants will assume this proposition to be true. Even so, Jackson does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. This claim, then, remains patentable over this cited art combination.

Rejection of claims 38, 40, 43, and 46 over Anderson in view of Fritz and Gics

The Examiner cites the Anderson/Fritz combination as above. The Examiner cites Gics as showing that a food tray can be placed in an upstanding position. Of course, such upstanding position includes a plurality of side-by-side trays interconnected with an adjacent tray. For present purposes, Gics still shows a flat bottom tray. Gics also does not recognize that stability of the trays when filled with food is an issue, nor that a solution to that issue exits. Gics, then, does not make up for the deficiencies in the Anderson/Fritz combination. These method claims, then, remain patentable over this cited art combination.

Rejection of claim 39 over Anderson in view of Fritz and Gics, in further view of Bunce

The Examiner cites the Anderson/Fritz/Gics combination as above. Bunce is cited for the proposition that microwave food trays conventionally have handles for convenience. Bunce's handles, however, extend outwardly from the sides of the tray. Applicants' handles, to the contrary, extend into the cavity for assisting in locating the food in a position that adds to the stability of the tray when placed in an upstanding position. See the application at page 5, ll. 30-36 and page 6, ll. 32-36, cited above in this regard.

Thus, Bunce does not make up for the glaring deficiencies of the Anderson/Fritz/Gics combination. In fact, disposing the handle inwardly adds further novelty to the present invention. None of the art even recognize Applicants' problems, much less propose a solution thereto. These claims, then, remains patentable over this cited art combination.

Rejection of claims 41 and 42 over Anderson in view of Fritz and Gics, in further view of Davis

The Examiner cites the Anderson/Fritz/Gics combination as above. The Examiner cites Davis for the proposition that sleeves can contain slots to receive flanges of the container to secure the sleeve to the container. For present purposes only, Applicants will assume this proposition to be true. Even so, Davis does not make up for the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. These claims, then, remains patentable over this cited art combination.

Rejection of claim 45 over Anderson in view of Fritz and Gics, in further view of Jackson

The Examiner cites the Anderson/Fritz/Gics combination as above. Jackson is cited for the proposition that multiple trays can be retained within a single sleeve. For present purposes only, Applicants will assume this proposition to be true. Even so, Jackson does not make up for

the glaring deficiencies in the Anderson/Fritz/Gics combination. That is none of the art even recognize Applicants' problems, much less propose a solution thereto. This claim, then, remains patentable over this cited art combination.

The Double Patenting Rejections

Upon the indication of allowability of claims in this application, a terminal disclaimer based on U.S. Patent No. 6,261,616 B1 will be submitted.

Conclusion

In view of the foregoing amendments and remarks, allowance of the claims respectfully requested.

Respectfully submitted,

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